



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0322]

Hours of Service of Drivers: B.R. Kreider & Son, Inc.'s Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its denial of the application of B.R. Kreider & Son, Inc., (Kreider) for an exemption from the requirement that drivers of commercial motor vehicles (CMVs) be released from work within 12 hours in order to take advantage of the short-haul exception to part of the hours of service (HOS) rules. Drivers qualifying for the short-haul exception are subject to the HOS limits but are not required to maintain a record of duty status (RODS) during the duty day. FMCSA concluded that Kreider has not demonstrated how its CMV operations under such an exemption would be likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: FMCSA denied the application for exemption by letter dated May 21, 2015, after notice and opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, E-mail: MCPSD@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also

specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

The HOS rules (49 CFR part 395) generally prohibit drivers from operating a CMV after the 14th hour measured from the time they come on duty following 10 consecutive hours off duty, though they must cease CMV driving at any time that they accumulate 11 hours of driving time in a duty day. The HOS rules also require operators of CMVs to maintain a RODS, or log, on board the CMV at all times (§395.8(a)). However, § 395.1(e)(1) provides an exception to this requirement for qualifying “short-haul” drivers. Drivers do not have to maintain a RODS on board the CMV if they (1) operate within a 100 air-mile radius of the normal work reporting location, (2) return to the work reporting location and are released from duty within 12 hours of the time they came on duty, (3) have at least 10 consecutive hours off duty separating each 12 hours on duty, (4) do not exceed 11 hours driving following 10 consecutive hours off duty, and (5) the motor carrier that employs them maintains and retains for a period of 6 months accurate and true time records showing the time the drivers reported for duty, the time they are released from duty, and the total number of hours the drivers are on duty. A driver who expects to qualify for the short-haul exception does not maintain a RODS on board the CMV. However, if later in the day the driver discovers that he or she is not going to qualify for the short-haul exception, the HOS rules require the driver immediately to prepare a RODS reflecting his or her activities during the entire day.

Application for Exemption

Kreider is an interstate motor carrier engaged in the short-haul transportation of materials such as topsoil, fill, and stone. Kreider’s CMV drivers do not go beyond a 100 air-mile radius of their normal work-reporting location during their duty day, but it is

impossible for its drivers to complete their duty day within the 12-hour limit. Kreider believes that it is impractical to require CMV drivers to prepare a RODS at this point. Kreider states that too much non-productive driver time results from this requirement. It believes that the same level of safety would be achieved operating under the short-haul exception without regard to the 12-hour requirement as would be achieved in the absence of the exemption.

Public Comments and Agency Decision

On November 5, 2014, FMCSA published notice of this application and asked for public comment (79 FR 65757). Twenty-one comments were received and are available for review in the docket. Kreider indicates that its drivers are spending 10 minutes making a RODS entry for a 5-minute stop. However, Agency guidance states that short periods of time (less than 15 minutes) may be identified on the RODS by drawing a line from the appropriate on-duty (not driving) or driving line to the “remarks” section and entering the amount of time and the geographic location of the change in duty status (Guidance Statement 1, § 395.8). This should take less than one minute. In addition, the FMCSA believes that while it is appropriate to relieve drivers of the task of maintaining a RODS if they limit their duty day to 12 hours, enforcement of the 11-hour and 14-hour rules would be severely hampered if roadside officials were deprived of the RODS of drivers whose duty days have exceeded 12 hours.

The Agency reviewed Kreider’s application and the public comments. By letter dated May 21, 2015, FMCSA denied the application because the Agency concluded that Kreider’s operations were not likely to achieve a level of safety equivalent to or greater than the level of safety that would be achieved in the absence of the exemption [49 CFR 381.310(c)(5)]. A copy of the denial letter is in the docket of this matter.

Issued on: June 17, 2015.

Larry W. Minor,
Associate Administrator for Policy.

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